

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 603 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? no

2. To be referred to the Reporter or not? no

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3. Whether Their Lordships wish to see the fair copy
of the judgement? no

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? no

5. Whether it is to be circulated to the Civil Judge?
no

M/S.BHAGWANJI PARSHOTTAM MEHTA.

Versus

LABHCHAND TRIBHOVANDAS

Appearance:

MR SURESH M SHAH for Petitioners

MR UA TRIVEDI for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 03/09/98

ORAL JUDGEMENT

1. This is a revision under Section 115 of the Code
of Civil Procedure against an order of the trial Court
granting application for amendment of the plaint and
permitting the plaintiff to change and re-describe the

array of the defendants. It appears that the Suit was originally filed against the only defendant Bhagwanji Parshottam Mehta. Sommons was issued to him. The report of the Bailiff, however, shows that the said defendant died about 20 years ago. Upon this report an application for amendment was moved by the plaintiff that actually it was a registered partnership firm, viz. M/s.Bhagwanji Parshottam Mehta having two partners and since there was mis-description of the defendant he may be permitted to amend the plaint. On this application dated 29.9.1994 the trial Court passed an order to fix this application for hearing. No date for hearing of this application was fixed in the order dated 29.9.1994. However, through the impugned order dated 6.1.1995 the said application was allowed. The order under revision is in Gujarati. English translation of this order is as under :

"Read the application. I have considered the facts of the application. It appears that there has been an error in describing the position of the defendant. Defendant is a firm. Therefore granted in the interest of justice. The amendment as prayed for has to be carried out by the next date."

2. This telegraphic order suffers from jurisdictional error, illegality and irregularity. The impugned order presumes that it was a case of misdescription of the defendant, inspite of the Bailiff's report that Bhagwanji Parshotamdas expired about 20 years ago, Bhagwanji Parshottam Mehta was not a firm, but an individual. If the application for correction of array of the defendant on such a report was proposed to be made and two partners of the alleged firm were proposed to be added as defendants, the rules of natural justice required that notices should have been issued to the proposed defendants No.2 and 3 who were none-else than the alleged partners of the so called registered firm. This was not done. On the other hand straight-away conclusion was reached that it is a case of error in describing the position of the defendant and the defendant is a firm. Such unilateral decision at that stage was not only irregular, but illegal. Without affording an opportunity of hearing to the defendants No.2 & 3 such order could not be passed ex-parte. The order was passed in the interest of justice, but I feel that the interest of justice has not been sustained rather it has been crushed.

3. The proceeding is irregular inasmuch as no date for hearing of the amendment application was fixed and it was straight-away disposed of on 6.1.1995. For this

reason the revision succeeds and is hereby allowed. The order under revision is set aside. The court below is directed to permit the revisionists especially revisionists Nos.2 & 3 to file their objection against the amendment application and thereafter the amendment application shall be decided in accordance with law after hearing the plaintiff as well as revisionists. No order as to costs.

sd/-

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